IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7864 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH ALIAS GABO CHIMANBHAI SOLANKI

Versus

COMMISSIONER OF POLICE

Appearance:

MS KRISHNA U MISHRA for Petitioner

MR UDAY BHATT, Ld. AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 26/09/2000

ORAL JUDGEMENT

The petitioner-detenu has, by filing this writ petition under Article 226 of the Constitution of India, challenged the legality and validity of an order of detention dated 09.01.2000 passed by respondent no.1 in exercise of powers conferred on him under Sec.3(2) of the

Gujarat Prevention of Anti-social Activities Act, 1985 (in short `the Act').

2. As per the papers of grounds of detention, the present petitioner is "a dangerous person" within the meaning of Sec.2(c) of the Act and further that activities of the detenu are prejudicial to the maintenance of the public order.

3. As per the case of the detaining authority, about 10 different cases for the offences punishable under IPC have been lodged against the detenu in different Police Stations in City of Baroda, and out of 10 cases, 9 cases are lodged for offences punishable under Sec.379 of IPC whereas one case is filed under Sec.406 of IPC. To arrive at a subjective satisfaction, the detaining authority has relied on statements of three witnesses whose identity has not been disclosed by claiming privilege under section 9(2) of the Act. That statements of witnesses were verified by the detaining authority on 3.1.2000 and the order of detention dtd. 9.1.2000 came to be passed, against the detenu which is challenged in this writ petition.

4. Though rules have been issued against the respondents none of them has filed affidavit-in-reply controverting the grounds to challenge the order of detention in this writ petition. Thus, whatever the contentions are taken by the petitioner in his petition to challenge the detention order, stand uncontroverted.

5. Ms.K.U.Mishra, learned advocate for the petitioner has argued that the petitioner has made a representation to the Minister through his advocate by Registered Post A.D. on 6.7.2000 and as per her arguments that representation is still pending undecided with State Government and no communication has been made to the petitioner by the State Government.

6. Mr.Uday Bhatt, learned AGP for the respondents has argued that, according to his file, representation was rejected on 11th July, 2000, and it was sent for effecting its service on the detenu, through the Jail Superintendent, on 24th July, 2000, and it was actually served on the same day i.e. on 24th July, 2000.

7. Ms.K.U.Mishra, learned advocate for the petitioner has argued that there is a considerable delay on the part of the Government for deciding representation of detenu as well as giving communication of the final result of the representation, to the detenu. As per the

facts stated by Mr.Uday Bhatt, there is a time lag of about 18 days for communicating the final result of the representation which was made known to the detenu and thus delay has not been explained by the Government.

8. Ms.K.U.Mishra, learned advocate for the petitioner has cited an authority of Harish Pahwa Vs. State of U.P. and Others reported in AIR 1981 S.C. 1126, wherein it has been held that it is the duty of the State to proceed to determine representations with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. Here in this case, none of the respondents has filed affidavit-in-reply. They have also not explained the above delay and, therefore, the safeguard guaranteed under Article 22(5) of the Constitution of India is violated and therefore order of detention which is challenged in this writ petition is bad in law and it requires to be set aside on that count only.

9. In view of this, this writ petition is allowed. The order of detention which is challenged in this Special Civil Application is bad in law and same is required to be quashed and set aside. Accordingly the detention order dated 09.01.2000 passed by the respondent No.1 in respect of petitioner-detenu is hereby quashed and set aside. The detenu is ordered to be released forthwith, if he is not required to be detained in any other criminal case or any other proceedings. Rule is made absolute. Direct service is permitted.

(H.H. Mehta, J.)

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